



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(Petitioner)
(Petitioner's address)

DECISION

MDV-20/46546

PRELIMINARY RECITALS

Pursuant to a petition filed October 25, 2000, under WI Stat § 49.45(5) and WI Admin Code § HA 3.03(1), to review a decision by the Fond du Lac County Dept. of Social Services in regards to the denial of eligibility for Medical Assistance, a hearing was held on January 24, 2001, at Fond Du Lac, Wisconsin. Hearings set for November 21, 2000, and December 27, 2000, were rescheduled at the petitioner's request.

The issue for determination is whether the county agency correctly determined that the petitioner had divested assets and denied MA eligibility for a penalty period of 10 months.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(Petitioner)
(petitioner's address)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Debra Gohlke, ESS
Fond Du Lac County Dept Of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

EXAMINER:

Kenneth D. Duren
Administrative Law Judge
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN: xxx-xx-xxxx, CARES PIN: xxxxxxxxxxxx) is an institutionalized resident of Fond Du Lac County, becoming institutionalized in a skilled nursing facility on July 25, 2000; he initially applied for Institutional – MA on or about August 25, 2000, and the county agency began to perform an asset assessment of the petitioner and his community spouse and their resources. Verification issues arose, delaying completion of the application; the application information was verified and the assessment completed on October 11, 2000.

2. On October 2, 2000, the county agency received verification from a local securities firm that indicated that the stocks listed on Exhibit #6, p. 3, had been previously registered with that firm in the name of “(Petitioner), Custodian FBO (daughter)” and that these stocks were transferred (on August 7, 2000, and September 1, 2000) to the name of (daughter) only.
3. (Daughter) is the daughter of the petitioner and his community spouse; (daughter) is currently 36 years old.
4. The stocks were purchased by the petitioner as custodian for his daughter, when she was a child, in contemplation of using the proceeds for her future educational costs; they were never actually liquidated for that purpose.
5. On October 12, 2000, the county agency issued a notice to the petitioner and his community spouse informing them that the community spouse asset share had been determined to be \$58,851.76. See, Exhibits #3, p. 2 & #6.
6. On October 17, 2000, the county agency issued a Negative Notice and a separate letter, to petitioner and community spouse, informing them that the agency had determined that the petitioner had divested \$41,563.21; that his application for MA was denied; and that a 10 month divestment penalty period would be imposed. See, Exhibit #6.
7. On October 25, 2000, the petitioner filed an appeal with the Division of Hearings & Appeals.

DISCUSSION

The Medical Assistance (MA) program is a so-called “means-tested” public assistance program. Means-tested programs have asset and income limits. A person over 65 is eligible for medical assistance unless his liquid assets exceed \$2,000. WI Stat § 49.47(4)(b)3g. A divestment occurs when an MA applicant, or person acting on the applicant's behalf, transfers otherwise available assets for less than fair market value during the lookback period. The lookback period is generally 36 months. WI Stat § 49.453(1)(f). Divesting assets renders MA applicants/recipients ineligible for MA for the number of months obtained by dividing the amount of disposed assets over the \$2,000 limit by the statewide average monthly cost to a private pay patient in a nursing home. WI Admin Code § HFS 103.065(5)(b); WI Stat § 49.453(3); see also, MA Handbook, App. 14.5.0. The then-applicable average in August, 2000, was \$3,833. MA Handbook, App. 14.5.0.

For MA, all available assets must be counted against the program limit. Assets are considered available if they are (1) actually available, (2) the person has a legal interest in the liquidated sum, and (3) the person has the legal ability to make the sum available for support and maintenance. MA Handbook, App. 11.1.0.

Here, the petitioner, as the father of the then-minor daughter, set up custodian stock investments for his child. However, he never accessed them as planned when the child grew and went to college. Rather, the petitioner and his wife paid for the child's education out of their income stream, leaving the stocks to accumulate undisturbed. He never closed them out, nor transferred them to his now 36-year-old adult daughter.

The community spouse testified that the couple never paid any taxes on the stocks, and that she believes the applicable income reporting statements at year-end have always gone, ultimately to the adult daughter. She admitted that the daughter let the couple access some of the dividend payments on the stocks to help meet their daily living maintenance needs. She affirmed that the principal was never touched by the petitioner or her. Finally, she testified that the stocks were never officially changed into their daughter's name until October, 2000, because her husband had always believed that they were (daughter)'s and would automatically become titled to her when she reached adulthood.

Under the Uniform Transfers to Minors Act, “A transfer made under s. 880.65 is irrevocable...”, and, “...the custodial property is indefeasibly vested in the minor...”. See, WI Stat § 880.66(2). See, also, Social Security Administration Program Operations Manual, SI 01120.205 & SI 01120.020(C)2. This was a transfer by an adult of securities registered in his name, using words that in “substance” name him as “a custodian for(name of minor)” and sufficient to meet the requirements of the Act. See, WI Stat § 880.65(1-2).

The MA Handbook states as follows:

Count funds held in an account for the benefit of a minor that are the result of transfers under Uniform Gifts to Minors Act. This act is also called the Uniform Transfers to Minors Act. The funds are available when determining eligibility *for the minor* unless a court determines otherwise.

App. 11.6.28(07-01-00)(Italics added for emphasis.)

I have found the same in a prior case. See, DHA Case No. MED-51/22471 (Wis. Div. Hearings Appeals October 5, 1998)(DHFS). Such funds are available for an applying minor’s care, or can be made available. They are not available to the transferor parent. That right was conveyed by the original transfer. The petitioner has had no legal right to the funds since the original transfer, and these securities are therefore unavailable to him. See, MA Handbook, App. 11.1.0. I conclude that this is a valid transfer under UTMA, and the stocks became (daughter)’s at that time, and thereafter.

The agency incorrectly characterized this account as simply an asset “owned jointly with his adult daughter” in initiating an inquiry with the Department’s regional experts, along with a primary query about the new joint asset policy. Accordingly, the experts ultimately talked at length about the new joint asset policy and the appropriate amount of the divestment alleged in their response to the agency. The petitioner’s “ownership” interest was *assumed* throughout the response. See, Exhibit #7.

The divestment determination is reversed. The petitioner transferred the asset to a then-minor many years ago, and never tried to rescind the transfer. The fact that the child is now an adult does not change the basic fact that title indefeasibly vested in the daughter long ago. The matter will be remanded for a rescission of the divestment determination, and a review of the petitioner’s eligibility for MA under his original application.

CONCLUSIONS OF LAW

The county agency incorrectly determined that the petitioner had divested an interest in stock certificates; these stocks were transferred to a then-minor dozens of years before the applicable lookback period under WI Stat § 880.65, et. seq.

NOW, THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with instructions to: rescind the divestment and 10 month penalty period determinations of October 17, 2000, imposed against the petitioner; review and re-determine the petitioner’s eligibility for Institutional – MA excluding consideration of the securities held by the petitioner a “Custodian – FBO” for his daughter as an available or divested asset; with written notice. These actions shall be completed within 10 days of the date of this Decision.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new

evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2001.

Kenneth D. Duren
Administrative Law Judge
Division of Hearings and Appeals
412/KDD

cc: FOND DU LAC COUNTY DEPT OF SOCIAL SERVICES
DHFS - Susan Wood